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I

RIGHTS OF NON-MUSLIMS IN ISLAMIC STATE

While discussing the rights of non-Muslims in an Islamic State, it should be clearly borne in mind that an Islamic State is essentially an ideological state, and is thus radically different from a national state. This difference in the very nature of these two types of states has important bearing on the problem under discussion, and can be best understood by a comparative study of the following points :

(1) An Islamic State classifies the people living within its jurisdiction in the light of their belief or disbelief in the ideology which constitutes the basis of the state. In other words, the people are divided into Muslims (who believe in the ideology of the state) and non-Muslims (who do not believe in that ideology).

(1) A national state classifies its citizens into groups of people in accordance with their belonging or not belonging to the nation or race which has established the state in question or which dominates over it and is responsible for running it. Herein the term 'majority' and 'minority' are used for the two respective groups.

(2) It is obvious from the ideological nature of an Islamic State that the

(2) The task of guidance and policy-making in a national state always re-

responsibility to run the state should rest primarily with those who believe in the Islamic ideology. Those who do not believe in the ideology of the state can, no doubt, be asked to cooperate, if they so like, with the Muslims in the task of administration but they should be neither called upon to undertake nor can be entrusted with the responsibility of policy-making.

mains in the hands of the majority community. As for the minority communities (whether social, cultural or religious) of the same nationality, they are not trusted with nor deemed capable of shouldering this responsibility. This position may not be explicitly declared or even admitted. Nay, the constitution of the country may categorically abolish all discriminations amongst the citizens but that is what is in vogue practically in every national state. Even if any member of the minority community is entrusted with any key-post, it is almost always a subterfuge or as a special deal with an individual. In reality, the minorities have nowhere any say in important matters of the state.

(3) An Islamic State, as already stated is by its very nature bound to distinguish between Muslims

(3) On the other hand, a national state can and in practice does follow the hypocritical policy of equat-

and non-Muslims and it, in an honest and upright manner, not only publicly declares this state of affairs but also precisely states as to what rights will be conferred upon its non-Muslim citizens and which of them will not be enjoyed by them.

(4) To solve the problems arising out of the presence of non-Muslims (*i.e.*, the people not subscribing to the basic principles of the state) within its boundaries, an Islamic State guarantees them certain specifically stated rights. Beyond those rights it does not permit them to meddle with the affairs of the state which is based on an ideology to which they honestly do not subscribe. Nevertheless, as Islam does not believe in false distinctions of race, colour, or territory, it always keeps the door open

ing all its citizens on paper and still actually retaining the unfair discrimination between the majority and the minority. Nobody can deny the fact that the minorities are almost everywhere deprived of even their basic human rights in the so-called modern national state.

(4) A national state, on the other hand, generally adopts any one or more of the following courses for the solution of its minority problem :

(*i*) to gradually destroy the separate entity of the minority.

(*ii*) to exterminate it physically by means of genocide ; or

(*iii*) to allow them to exist as untouchables.

All these three methods have been and are still being largely employed by national states all over the world. Muslims of India are now having a very bitter experi-

for them to embrace Islamic principles of life and become equal participants in all matters concerning the State and the government.

(5) An Islamic State is bound to confer all those rights on its non-Muslim citizens which have been conferred upon them by the Islamic *Shari'ah*. No one has the right to effect the slightest curtailment, in them.[1] Muslims have however been empowered to confer upon them additional rights subject only to their not being repugnant to the teachings of Islam.

ence of this solution of minority problem.

(5) Whatever rights are actually granted to the minority under a national state, depend on the sanction of the majority. Thus the fate of the minorities depends on the whims and caprices of the majority who always has the power to curtail them at will of even the fundamental human rights.[2]

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1. Hence the word *"Zimmi"* which literally means "guaranteed".

2. Foreign reviewers and critics have particularly criticized this discussion over the approach and policy of a national state and have described it as inaccurate and even "burlesque."

But this criticism of theirs is totally unfounded. The description of national minorities given by the author is based on most authentic sources. We would refer the learned critics to see C. A. Macartney, *National States and National Minorities*, wherein the author, on unimpeachable evidence, describes the fate of national minorities in national states. He observes :

"A national state and national minorities are incompatible. Where fate has put a nationally conscious minority in a state, there are only three possible solutions, and (although few govern-

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These five points of distinction show very clearly how Islam treats its non-Muslim subjects and how a national state treats its racial and cultural minorities. If these distinctions are ignored, one cannot escape falling a prey

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ments believe this) forcible denationalization is not one of them. Perhaps a *fourth should be counted physical slaughter : but although this most effective of all remedies is still in vogue in certain countries,* it shall not be discussed here. The three possibilities which can be considered are : either the theoretical basis and existing populations may be left untouched, but the frontiers may be revised in such a way as to leave the alien elements outside them ; or the basis of the state may be retained, and its frontiers left intact, but the minorities may be eliminated by emigration (perhaps through exchange of population) : or thirdly, existing population and frontiers may be retained, but the basis of the state may be altered" (p. 423).

This is theoretical position, but in practice, the second (*i e.*, elimination by migration) and the *fourth* (*i.e.*, physical extermination) remedies have usually been adopted. An idea of the position of minorities can be had from the following extract from the above-quoted book of Prof. Macartney who acted as Secretary to the Minorities Committee of the League of Nations :

"The minorities say : Our charter of liberties is thus blatantly inadequate. It represents only a fraction of our minimum needs. But even these have been made a dead letter. Our Governments have violated their treaties again and again. They have deprived us of our land, our schools, our churches, and the League has let them do it. It has winked at flagrant violations of the Treaties. It has put us off with mealy-mouthed resolutions about our duties............The mere fact that from the inauguration of the League procedure up to February 1931 no less than 525 petitions had been submitted to the League (excluding those submitted under the Upper Silesian procedure) indicates no healthy state of things......It is, moreover, notorious that certain of the minorities whose case has been the most dismal have been afraid to petition the League at all for fear of incurring reprisals

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to many a mis-understanding due to the hypocritical pretensions of the present-day national states of granting equal rights to all citizens of the state on paper on the one hand and leaving none of them unviolated in practice on the other.

We now revert to the problem under consideration.

II

THE CLASSIFICATION OF NON-MUSLIM CITIZENS

The Islamic *Shari'ah* divides non-Muslim citizens into three categories, *viz.* :

(*a*) Those who become the subjects of an Islamic State under some treaty or agreement ;

(*b*) Those who become its subjects after being defeated by the Muslims in a war ; and

(*c*) Those who are there in the Islamic State in any other way.

So far as the general rights of non-Muslims (*i.e.*, the

......the subject-matter of the petitions which have been received ranges *from comparatively trivial cases of insulting words to cases of raping, torture and murder* ; *from injustices inflicted on individuals to the systematic oppression of communities hundreds of thousands and even millions strong* (pp. 381-384).

The author admits in clear words that :

> "*Generally speaking the fate of minorities has been one of suffering. Almost every state has committed, and every minority suffered under flagrant violations of the Minority Treaties. And these have been committed, to all intents and purposes, with impunity*" (p. 390) (Emphasis mine).

Other authorities can also be quoted in support of the bitter facts presented above.—*Editor.*

fundamental human rights) are concerned, all are treated alike. However, the respective instructions relating to the first two groups being slightly different from each other as well as from those concerning the third group, we propose to deal first with the specific instructions relating to groups (*a*) and (*b*) before embarking upon a discussion on the general rights of all *Zimmis*.

"Contractees"

For those who accept the hegemony of an Islamic State without or even during a war, and enter into a specific contract with it, Islam prescribes that all matters relating to them should invariably be decided in accordance with the terms of the treaty or agreement. To offer generous treatment to opponents in order to persuade them to lay down arms and then to throw them over-board, is the everyday practice of all the so-called civilized nations of the world; but it militates against the injunctions of Islam which cannot brook such deception. Islam considers such feats of strategy as fraudulent and mean and prohibits them totally. It enjoins that once the terms have been settled with any group or community, they must be fully adhered to, even if they seem to be distasteful later on. Muslims are bound by their faith to abide by them out in letter and spirit. The Holy Prophet (peace be on him) has clearly enjoined :

> "If you fight against a people and overpower them, and they agree to pay a fixed indemnity or annual revenue (*kharaj*) to you in order to save their lives and those of their progenies, then do not take a penny more than the fixed amount, because that will not be

valid.[3]

"Beware whosoever is cruel and hard on such people (*i.e.*, "contractees") or curtails their rights, or burdens them with more than they can endure, or realises anything from them against their free-will, *I shall myself be a complainant against him on the Day of Judgment.*"[4]

These injunctions of the Holy Prophet (peace be on him) clearly and unambiguously proclaim that no arbitrary change or alteration is permissible in the terms and conditions of any agreement that is entered into with the *Zimmis.* Neither can the amount of their annual levy be arbitrarily increased nor their lands and their buildings be confiscated against that agreement. Besides that they cannot be subjected to undue and harsh treatment and their religion and their personal law shall remain immune from state interference. Their lives, honour and property are as sacred as those of the Muslims. Their rights cannot be curtailed, nor can they be tyrannized. They are not to be deprived of their lawful belongings, nor made to bear a burden which is beyond their capacity.

Thus, in the case of the contractee non-Muslims the fundamental principle is that the relations between them and the Islamic State shall be based on the terms of the agreement. As such no specific laws have been formulated by the Muslim jurists in regard to the treatment to be meted out to them, except laying down the general rule that such non-Muslims should be treated according to the terms of the agreement or the treaty that might have been

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3. Related by Abu Da'ud, *The Book of Jihad.*
4. *Ibid.*

entered into. Imam Abu Yusuf[5] writes :

> "We shall take from them only what was mutually fixed at the time of peace-making. All terms of the treaty shall be strictly adhered to and no additions would be permitted."[6]

The "Conquered"

People who continue to fight against the Muslims till they are overpowered and lay down arms only when Muslim armies have entered their cities and towns as conquerors, come under this second category. When such people are made *Zimmis*, they are given certain specific rights, details of which can be found in all the standard books on this subject. Below we state briefly all those relevant injunctions, on this point, which explain the constitutional status of *Zimmis* belonging to this category :

(*a*) As soon as the state accepts *Jizyah* from them, it becomes the obligatory responsibility of every Muslim to protect their lands and properties and their life and honour. The acceptance of *Jizyah* establishes the sanctity of their lives and property, and, thereafter, neither the Islamic State nor the Muslim public have any right to violate their pro-

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5. Imam Abu Yusuf was one of the greatest Jurists of Islam. He was the Chief Justice of the Abbasid empire during the reign of Harun al-Rashid. He was the chief disciple of the great legist, Imam Abu Hanifa and he has been regarded, throughout Muslim history, as an authority on Muslim Law. His great work, *Kitab al-Kharaj*, is counted as one of the source-books on the Hanafite Law. —*Editor*

6. Abu Yusuf, *Kitab al-Kharaj*, Cairo, p. 35.

perty, honour or liberty, 'Umar, the second Caliph, clearly enjoined Abu 'Ubaidah, the Commander-in-Chief of Islamic armies, as follows :

"The moment you accept *Jizyah* from them, you forego the right to take liberties with them or with their properties."

(*b*) After the agreement, the *Zimmis* continue to enjoy the ownership of their properties and their heirs have full rights of inheritance in it. They possess full powers of sale, transfer, grant and mortgage in respect of all such properties and the Islamic State has no right to dispossess them of any of these rights.

(*c*) The amount of *Jizyah* is to be fixed in accordance with their financial position. Those who are rich have to pay more, while those who belong to the middle class pay less, and the least amount is charged from the poor class. Those who are destitutes and do not have any fixed source of income or depend on others for their livelihood, are completely exempted. No fixed amount has been prescribed for *Jizyah*, and it has been enjoined that only that much should be taken which does not involve undue hardship in payment. Caliph 'Umar in his time, fixed the amounts which were equivalent to rupee one[7] per month for the rich people, paisas fifty per month for the middle classes and only twenty-five paisas per month for the poor.

(*d*) *Jizyah* is levied only on those who have actually

7. A rupee is approximately equal to one shilling and six pence and there are hundred paisas in a Rupee.—*Editor*.

fought against Muslims or who are able-bodied and can participate in a war against Islam. Non-combatants like women, children, lunatics, slaves, blind, lame, age-stricken or physically disabled persons are exempt from *Jizyah*. Similarly the clergy, the monks and the servants of the monasteries are exempt therefrom.[8]

(e) Muslims do have the right to confiscate the places of worship in such towns as have been taken by storm. But to forego this right willingly and to allow such places of worship to remain intact as a gesture of goodwill, is generally held to be more pious. In all the countries conquered in the days of Caliph 'Umar, not a single place of worship was ever desecrated or interfered with.

Abu Yusuf writes :

> "All such places of worship were left as they were. They were neither razed to the ground nor were the conquered deprived of their goods or property."[9]

Ancient places of worship are never permitted to be destroyed.

III

GENERAL RIGHTS OF THE ZIMMIS

We will now discuss rights of the *Zimmis* which cover

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8. See : Kamaluddin Ibn Hammam, *Fath Al-Qadir* and Abu Yusuf, *Kitab Al-Kharaj*

9. Abu Yusuf, *ibid.*

all three groups categorized above.

The blood of a *Zimmi* is considered as sacred as that of a Muslim. If a Muslim kills a *Zimmi*, retribution will have to be made just as for killing a Muslim. A Muslim killed a *Zimmi* in the days of the Holy Prophet (peace be on him). The Holy Prophet ordered his execution saying :

> "I am responsible for obtaining redress for the weak."[10]

In the days of Caliph 'Umar a person of the tribe of Bakr bin Wa'il killed a *Zimmi* of Hirah. The Caliph ordered that the murderer be handed over to the kith and kin of the deceased. This was done and the successors of the deceased executed him.

During the reign of 'Uthman, the third Caliph, an order was issued for the execution of Obaidullah, son of Caliph 'Umar because he was said to have killed Hurmuzan, the assassin of 'Umar, and the daughter of Abu Lulu under the impression that they had conspired to murder his illustrious father. Both of them were *Zimmis*.

In the days of 'Ali, the fourth Caliph, Muslim was accused of murdering a *Zimmi*. The charge having been proved, 'Ali ordered the execution of the Muslim. The brother of the deceased submitted, however, that he had forgiven him. But 'Ali was not satisfied and said that perhaps the people had threatened him. It was only when the brother of the deceased sought pardon for the murderer, persistently insisting, that he had received the blood-money and that the deceased would not return to life by the execution of his murderer, that 'Ali gave his consent to release the murderer

10. Shaukani, *Nail Al-Autar*.

and said :

"Whosoever is our *Zimmi*, his blood is as sacred as our own and his property is as inviolable as our own property."

In another reference, 'Ali is reported to have said :

"They have accepted the position of *Zimmis* on the explicit understanding that their properties and their lives will remain sacred like those of our (*i.e.*, of the Muslims)."

That is why the Muslim jurists have inferred that if a Muslim, even unintentionally, kills a *Zimmi*, similar compensation must be paid as is fixed in the case of the unintentional murder of a Muslim.

Zimmis and the Criminal Law

The Penal Laws are the same for the *Zimmis* and the Muslims, and both are to be treated alike in this regard. The *Zimmis* are subject to the same penalties as are the Muslims. Thus, for instance, whether it is a *Zimmi* who steals or a Muslim, the hand of the thief will be chopped off in both cases. Similarly, whether it is a *Zimmi* or a Muslim who levels an unproved charge of adultery against any male or female, the same punishment would be meted out to both. The punishment for adultery is also the same in both cases. In the matter of drinking wine, however, the *Zimmis* are exempt from punishment.[11]

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11. According to Imam Malik, the *Zimmis* are exempt from the punishment for adultery also. He infers this from the decisions of 'Umar and 'Ali which lay down that if a *Zimmi* commits adultery his case should be referred to his co-religionists

Civil Laws

The Civil Laws, too, are the same for both the *Zimmis*, and the Muslims. There is thus complete equality between them in this respect. In fact, this was exactly what 'Ali meant when he said that their properties are as sacred as are the properties of the Muslims. A natural corollary of this equality of status is that whatever restrictions are placed on the Muslims under the Civil Laws, the same are applicable to the *Zimmis*.

Whatever objects, forms and means of trade are prohibited for the Muslims, the same are also prohibited for the *Zimmis*. For instance, interest is unlawful (*haram*) for the Muslims, and similarly it is unlawful for the *Zimmis*. But in the case of drinking wine and eating pork the *Zimmis* are free to take them. They can prepare, drink and deal in wine and they can also rear, eat and sell pigs. Not only that, if any Muslim harms or destroys their liquor or their pigs, he will be made to pay compensation for that loss. According to the *Durr al-Mukhtar* :

"If a Muslim spoils the wine of a *Zimmi* or harms his pigs, he will have to pay for them."[12]

Protection of Honour

To assault, injure or abuse a *Zimmi* or even to backbite him is considered just as immoral as is doing such things in respect of a Muslim. According to the Islamic law :

> "It is imperative for Muslims to refrain from causing inconvenience to a *Zimmi* and backbiting him,

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12. Alauddin, *Durr al-Mukhtar*. It is an authentic collection of the judgments and *fatwas* (verdicts) of the Hanafi school of thought. —*Editor*

for backbiting a *Zimmi* is as much prohibited as is to backbite a Muslim."[13]

The Inviolability of Guarantees

The responsibility which Muslims take upon themselves in respect of non-Muslims has an abiding value and they are not permitted to break the bond. But the *Zimmis* have, on the contrary, the right to renounce it as and when they like. According to the Muslim legists, so far as Muslims are concerned, the responsibility of *Zimmis* if once accepted becomes obligatory and it cannot be forsaken. But for the *Zimmi*, it is discretionary, *i.e.* if they desire to forego it, they can do so.[14]

A *Zimmi* may commit the greatest of crimes and yet it will not disqualify him from being treated as a *Zimmi*. Even if he refuses to pay the *Jizyah* or kills a Muslim, or abuses the Holy Prophet (peace be on him) or attacks the honour of a Muslim woman, he will not be considered to have lost his right of protection. He will only be punished for the crime he commits but he will not be declared a rebel, nor deprived of the privileges accorded to him as a *Zimmi*. There are only the following two crimes which deprive the *Zimmis* of their right to protection, namely : (1) when they leave the Muslim state and go over to its enemies, and (2) when they openly revolt against the state and to overthrow it.

Personal Law

All personal matters of the *Zimmis* are to be decided in

13, Alauddin, *Durr al-Mukhtar.*

14. Alauddin Abu Bakr bin Sa u l al-Kassani, *Badāi al-Sanāi* : a source-book of the Hanafi school of Islamic law. —*Editor.*

accordance with their own Personal Law. The corresponding laws of *Shari'ah* are not to be enforced on them. If anything is prohibited for the Muslims in their Personal Law but the same is not forbidden to the *Zimmis* by their religion, they will have the right to use that thing and the courts in the country will decide their cases in the light of *their* Personal Law. For instance, marriage without witnesses and without fixation of *Mehr* (dower money) or marriages within the period of *'Iddat*,[15] or marriages in contravention of consanguinity, if permitted in the Personal Law of the *Zimmis*, will be allowed to stand. This has been the rule of all Muslim Governments since the days of the Early Caliphs. 'Umar bin 'Abd al-'Aziz once asked for a *fatwa* in this respect from Hasan al-Basari, saying :

> "How is it that the Caliph left the *Zimmis*, free in the matters of marriages regardless of consanguinity and in the matters of drinking wine and eating pork ?"

Hasan replied :

> "The *Zimmis* accepted to pay *Jizyah* only because they wanted to be free to live in accordance with their own Personal Law. You have only to follow what your predecessors did. You are not to deviate or to innovate."

But if from amongst the *Zimmis* both the parties request that their disputes be decided in the light of the Islamic *Shari'ah*, the Islamic Courts will enforce the *Shari'ah* on them Further, if in a matter of Personal Law, one to the parties is a Muslim, the case will have to be dealt with in accordance with the Islamic *Shari'ah*. For instance, if a Christian woman marries a Muslim and becomes a widow,

15. This period is normally four months and ten days. In the case of pregnancy, it extends to and expires on delivery.

she cannot be permitted to marry until the expiry of the full period of *'Iddat*. If she does so, such a marriage would be regarded as null and void.[16]

Religious Rites

The Islamic Law and practice regarding the public performance of religious rites and communal festivals by the *Zimmis* are equally generous. In their own towns and cities they are allowed to do so with the fullest freedom. In purely Muslim habitations,[17] however, an Islamic Government has full discretion to put such restrictions on their observance as it deems necessary.

In *Badāi'* it said:

> "In localities not covered by the term 'purely Muslim habitation', the *Zimmis* will not be stopped from selling wine or pork or from taking out procession of the Cross or from blowing conches, although the number of Muslim inhabitants therein may not be negligible. These matters will, however, be considered objectionable in towns and places which may be termed as 'purely Muslim habitation', *i.e*, those where Friday and *'Id* congregations are held."
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> "Regarding acts which are prohibited by their codes also, for instance adultery, they are to be restrained from committing them even within the limits of their own towns and habitation."[18]

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16. *Al-Mabsut*, Vol. V, pp. 38-41.

17. "Purely Muslim habitation" is a translation of the technical term of the *Shari'ah*, *"Amsar al-Muslimin"*. This word connotes habitations on lands owned by Muslims and consecrated for demonstrating the glory and supremacy of the Islamic way of life.

18. Alauddin Abu Bakr, *Badāi' wal-Sanāi'*, Vol. VII, p. 113.

And even in purely Muslim cities and towns, they are only restricted from taking out public processions of the Cross and of the idols and from openly blowing conches in the markets and along the roads. Within the boundaries of their own places of worship, they can perform all these rites and no Islamic Government will interfere therein.[19]

Places of Worship

Even in purely Muslim areas, the non-Muslim places of worship built in the part are not to be interfered with, and if they are damaged or destroyed, the *Zimmis* have the right to rebuild or repair them. But they are not entitled to build new places of worship in these areas. In places which are not purely Muslim areas, there is no such restriction on them. Similarly, in those cities and places which may have previously been purely Muslim areas, but have ceased to be such areas and where Friday and *'Id* congregational prayers and enforcement of *hudud* are no longer in vogue, the *Zimmis* can build new places of worship and demonstrate the performance of their religious rites.[20]

Ibn 'Abbas has said :

> "In towns founded by the Muslims, the *Zimmis* have no right to build new places of worship or to blow conches in the market or on roads or to sell wine or pork openly. But in cities originally established by non-Muslims and only subsequently conquered by the Muslims, the rights of the non-Muslims will be decided in accordance with a treaty and it is obligatory on the

19. *Sharah al-Siyar al-Kabir*, Vol. III, p. 251.
20. *Badāi'*, Vol. VIII, p. 114 ; *Sharah al-Siyar al-Kabir*, Vol. III, p. 257.

Muslims to abide by it."[21]

Concessions in the Realization of Jizyah and Kharaj

The use of violence and coercive methods in the realization of *Jizyah* or *Kharaj* from the *Zimmis* is prohibited and kindness and benevolence are enjoined in this respect. It is also forbidden to impose amounts which may be beyond their means. Caliph 'Umar had clearly ordered that they should not be made to pay more than what they could actually afford.[22]

And even for that they are not to be put to any undue inconvenience. Thus, their properties cannot be auctioned in case of failure to pay *Jizyah*, Caliph 'Ali himself directed one of his governors not to auction or sell their apparel or cattle for the realization of *Kharaj*.[23] On another occasion he gave the following instructions to one of his governors at the time of deputing him for his office :

> "Their winter and summer apparel, their utensils and agricultural implements and their cattle should not be sold to realize *Kharaj*, nor should anybody be beaten or kept standing in the sun, nor should any of their properties be auctioned for this purpose. Now that we have been made their rulers we should treat them wish mildness and leniency. If you disobey these orders of mine, God will take you to task for it, and if I learn of your disobedience, I shall remove you from office."[24]

In the realization of *Jizyah* also every form of coercion

21. Abu Yusuf, *Kitab al-Kharaj*, p. 88.
22. *Ibid.*, pp. 8, 82.
23. *Fath al-Bayan*, Vol. 4, p. 93.
24. Abu Yusuf, *Kitab al-Kharaj* p 9.

is strictly forbidden. In his directive to Abu 'Ubaidah, the Governor of Syria, Caliph 'Umar said that Muslims should not be permitted anyway to harm the *Zimmis* or put them to inconvenience or illegally deprive them of their properties.[25]

When, during his journey to Syria, Caliph 'Umar learnt of his governor's punishing the *Zimmis* for non-payment of *Jizyah*, he said :

> "Do not chastize them, for if you do so, God Almighty will do the same to you on the Day of Judgment."[26]

Hisham bin Hakam found a Government officer punishing a *Qibti* for failure to pay *Jizyah* by making him stand in the sun. He scolded him and said :

> "I have heard the Prophet (peace be on him) saying that God will chastize (in the Hereafter) those who chastize human beings in this world."[27]

In regard to the defaulters of *Jizyah*, the Muslim Jurists have permitted the awarding of only simple imprisonment as a corrective measure.[28]

Those *Zimmis* who become bankrupt, are not only exempt from the payment of *Jizyah*, but are entitled to help from the *Bait al-Mal* (State Exchequer). Khalid bin Walid, in his famous "Covenant of Peace" given to the people of Hirah, wrote :

"I have stipulated that if any one of them becomes

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25. Abu Yusuf, *Kitab al-Kharaj*, p. 82.
26. *Ibid*, p. 71.
27. Abu Da'ud, *Kitab al-Kharaj, Bab al-Fae wa-al-Imarah*.
28. Abu Yusuf, *Kitab al-Kharaj*, p. 70.

unfit to work on account of old age or some other cause, or if anyone who was formerly rich becomes so poor that his co-religionists have to support him by giving him alms, such persons will be exempt from paying the *Jizyah* and they, together with their dependents, will be helped from the Islamic Treasury (*Bait al-Mal*)."[29]

Once Caliph 'Umar noticed an old *Zimmi* begging in the streets. He asked him as to the reason for doing so. The *Zimmi* replied that he did so in order to be able to pay the *Jizyah*, whereupon the Caliph exempted him from its payment, sanctioned a pension for him and directed his Treasury Officer in the following words :

"By God, it is undoubtedly not just that we derive benefit from a person in the prime of his youth but leave him to beg in the streets when he is stricken with old age."[30]

During his journey to Damascus, Caliph 'Umar ordered the fixation of pensions for the invalid and the aged *Zimmis*.[31]

If any *Zimmi* dies leaving arrears of *Jizyah*, those arrears cannot be realized from the property he has left nor can they be claimed from his successors. Abu Yusuf writes :

"If any *Zimmi* has to pay *Jizyah* and dies before paying it, the same will not be realizable from his successors nor from the property left by him.[32]

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29. Abu Yusuf, *Kitab al-Kharaj*, p. 85.
30. *Ibid.*, p. 72 ; *Fath al-Qadir*, Vol. 4, p. 373.
31. *Futuh al-Buldan* (European edition), p. 129.
32. Abu Yusuf, *Kitab al-Kharaj*, p. 70 ; *Al-Mabsut*, Vol. X, p. 81.

Trade Tax

Zimmi traders also have to pay a trade-tax as is charged from the Muslim traders on trade goods of the value of 200 *dirhams* or more or if they own 22 *mithqals* or more of gold.[33] No doubt, in the beginning, the Jurists levied 5% trade-tax on *Zimmi* business-men whereas only 2½% was realized from the Muslim traders. This was, however, not on the basis of any Quranic injunction but solely on the exigencies of time. The position was that Muslims had been mostly busy in the defence of the country and business had almost entirely passed into the hands of the *Zimmis*. The tax reduced in the case of Muslim traders only to encourage and protect them from undue competition.

Exemption from Military Service

Zimmis have been exempted from military duty, because the defence of the state against its enemies has been made the responsibility of its Muslim population only. Evidently only those people who believe in the basic ideology of the state sincerely can and should fight for its protection. Again, only the believer in that ideology can be expected to honour the moral principles which have been prescribed by Islam for warfare. Others can fight for it only as mercenaries and, consequently, they cannot be expected to observe the Islamic ethical code in the heat of the battle. These are the main reasons why the *Zimmis* have heen exempted from the military service and have only been enjoined to pay their monetary share in the defence of

33. Abu Yusuf, *Kitab al-Kharaj*, p. 70 ; But this ceiling for trade goods or ownership can be revised. It was fixed with respect to the conditions prevailing at that time.

the state. *Jizyah* is thus not only a symbol of loyalty to the state but it is also the contributory compensation for exemption from military service, and that is why it is imposed only on males, capable of military service. Whenever Muslims are unable to protect the *Zimmis*, the *Jizyah* and *Kharaj* that might have been realized from them, have to be returned.[34] At the time of the battle of Yarmuk, when the Romans gathered huge armies to fight against Muslims and the Muslims had to forego their occupation of most of the towns of Syria in order to concentrate at a single point. Abu 'Ubaidah, the Commander-in-Chief, ordered his subordinates to return the *Jizyah* and the *Kharaj* already realized from the *Zimmis* and to inform them that as the Muslims were unable to protect them, they were returning

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34. For a detailed discussion on this subject refer to : *Mabsut*, Vol. X, pp. 78-79 ; Hadaya, *Kitab al-Siyar fi Kaifiyat Qismat al-Ghanaem and Baab al Jizyah : Fath al-Qadir*, Vol. IV, pp. 327-28 and pp 369-70

It should, however, be remembered that if the *Zimmis* offer their services voluntarily in case of war, the persons doing so will be exempted from payment of *Jizyah*. Furthermore, the fact that should also be kept in view in this respect is that the obnoxiousness that the non-Muslims generally feel by the very mention of the term *Jizyah*, is the result of persistent and baseless propaganda that the antagonists of Islam have been carrying on for the last so many centuries. As a matter of fact there is absolutely no basis for this feeling. *Jizyah* is the consideration for the protection and the safeguard of their right that an Islamic State guarantees to the non-Muslims. Then, this is realized from the able-bodied males only. The people who mischievously call it 'a fine for not accepting Islam' can be pertinently asked ; what name will they give to *Zakat* which is charged from all adult Muslims—males as well as females—and the rate of which is much higher than that of *Jizyah* ? Is that the fine for accepting Islam ?

whatever they had realized from them. It need hardly be added that all officers promptly did so. Balazuri, describing the reaction of the non-Muslim population of these towns, writes that when the Muslims refunded the amounts of *Jizyah* in Hums, the people unanimously declared :

> "We prefer your Government and its keen sense of justice to the cruelty and injustice of our own co-religionists and we are not going to allow their agents to enter the gates of the city unless we are overpowered by them."[35]

IV

MUSLIM JURISTS AND THE ZIMMIS

In the foregoing pages we have briefly discussed the details of some of the laws which were adopted to protect the rights and privileges of non-Muslims in an Islamic State. Before proceeding further we wish to stress that under all Muslim governments since the days of the Righteous Caliphs, whenever any injustice was perpetrated on the *Zimmis*, the Muslim Jurists stood up with one voice to champion their cause and they emphatically condemned all such acts of high-handedness. A well-known event of history is that Umayyad Caliph Walid bin 'Abd al-Malik had forcibly incorporated a portion of a Cathedral in Damascus into his mosque. When 'Umar bin 'Abd al-Aziz became the Caliph, the Christians reported this to him, and he at once wrote to the governor of the province to demolish those portions of the mosque which stood on the land of the Cathedral and

35. *Futuh al-Buldan* (European ed.), p. 137.

to hand it over to the Christians.[36]

Walid bin Yazid, fearing a Roman attack, had exiled the *Zimmis* of Cyprus to Syria. Muslim Jurists and the Muslim public protested strongly against this measure and condemned it as a great sin ; so much so that when his son Yazid bin Walid became Caliph, he had to send back all the exiles to Cyprus, for which he was highly praised both by his friends and foes Isma'il bin 'Ayyash has mentioned this. He says :

> "Muslims in general dissociated themselves from this act and all well-known Jurists declared it to be a great sin. And when Yazid bin Walid became Caliph and sent them back to Cyprus, Muslims generally approved of it and praised him for being just and good."[37]

Balazuri tells us that once some of the hill tribes of Lebanon rose in revolt against the state. Thereupon, the governor, Saleh bin Abdullah, despatched an army to crush it and the army put all the male combatants of the revolting band to death. As for the citizens, he exiled some of them and allowed the remaining to live there. Imam Auzai'i was alive in those days. When he learnt of it he reprimanded Saleh vehemently. The following extract from the letter that he wrote to him speaks for itself :

> "*Zimmis* of the hill tracts of Lebanon have been exiled and you know the fact. Amongst them are men who had not taken part in the revolt. I fail to understand why commoh people should he punished for the

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36. *Futuh al-Buldan* (European ed.), p. 132.
37. *Ibid.*, p. 156.

sins of particular individuals and be deprived of their homes and properties. The Quranic injunction is quite clear that ultimately everybody will have to account for his own actions and nobody shall be held responsible for anybody else's actions. This is an eternal and universal injunction and the best advice, therefore, that I can give to you is to remind you of one of the directives of God's Prophet (peace be on him) that he himself will stand up as complainant against all such Muslims who are unkind to those non-Muslims who have entered into an agreement with them and tax them beyond endurance."[38]

History is replete with countless instances of the same nature, which go to show that Muslim Jurists—the same people who are now-a-days called "Mulla"—have always stood for the rights of *Zimmis*, and if at any time the rulers dared to be cruel to them, they as well as all the *'Ulama* of the age invariably stood up to defend the rights of the *Zimmis* and to condemn such action in the strongest possible terms.

V

ADDITIONAL RIGHTS AND PRIVILEGES

So far we have referred to those inalienable rights which must *necessarily* be bestowed upon the *Zimmis* by an Islamic State, as they have been conferred upon them by the Islamic *Shari'ah*. Muslims are not entitled to curtail them in any way whatsoever. They are, however, permitted

38. *Futuh al-Buldan*, p. 179.

to grant them other rights and privileges to an extent that is not repugnant to the spirit or the commandments of the *Shari'ah*.

Here we attempt to lay down some additional rights that may be granted to the non-Muslim subjects of an Islamic State.

(1) Political Representation

Let us take the matter of elections first. An Islamic Government is an ideological Government. Therefore it cannot afford to indulge in the deceptive measures which are commonly employed by secular national states with regard to the rights of national minorities. The Head of an Islamic State is bound by law to conduct the administration of the state in accordance with the Islamic principles and the primary function of *Shura* (Council) is to assist him in doing so. It is thus obvious that those who do not accept the ideology of Islam as their guiding light cannot become the Head of the Islamic State or the Members of its *Shura* (Council).

However, in regard to a Parliament or a Legislature of the modern conception, which is considerably different from the *Shura* in its traditional sense, this rule could be relaxed to allow non-Muslims to become its members provided that it has been fully ensured in the constitution that:

(*i*) It would be *ultra vires* of the Parliament or the Legislature to enact any law which is repugnant to the Qur'ān and the *Sunnah*.

(*ii*) The Qur'ān and the *Sunnah* would be the chief source of the public law of the land.

(*iii*) The Head of the State or the assenting authority

would necessarily be a Muslim.

When these provisions ensured, the sphere of influence of non-Muslim minorities would be limited to matters relating to the general problems of the country or to the interests of minorities concerned and their participation would not damage the fundamental requirements of Islam.

It is also possible to permit the setting up of a separate representative Assembly for all non-Muslim groups in the capacity of a Central Agency through which all the demands for their collective needs may be submitted to the Parliament. The membership and voting rights of such an Assembly will be confined to non-Muslims and they would be given the fullest freedom within its framework. Through this agency :

(*a*) they may exercise the right to propose law in connection with their Personal Law and the amendments thereto. All such proposals and amendments could be placed on the Statute-Book after receiving the assent of the Head of the State ;

(*b*) they may submit representations, objections, suggestions etc., with the fullest freedom in regard to the general administration of the Government and the decisions of the Parliament. The Islamic Government would be bound to consider them sympathetically and justly ;

(*c*) they will be allowed to raise questions with regard to matters relating to their specific groups as well as the problem affecting the State as a whole. A representative of the Government may always be there to furnish replies to all such questions.

(2) Freedom of Expression

In an Islamic State, all non-Muslims will have the same freedom of conscience, of opinion, of expression (through words spoken and written) and of association as the one enjoyed by the Muslims themselves, subject to the same limitation as are imposed by law on the Muslims. Within those limitations, they will be entitled to criticise the Government and its officials, including the Head of the State.

They will also enjoy the same rights of criticizing Islam as the Muslims will have to criticize their religion.

They will likewise be fully entitled to propagate the good points of their religion, and if a non-Muslim is won over to another non-Islamic creed, there can be no objection to it. As regards Muslims, none of them will be allowed to change creed. In case any Muslim is inclined to do so, it will be he who will be taken to task for such a conduct, and not the non-Muslim individual or organization whose influence might have brought about this change of mind.

The *Zimmis* will never be compelled to adopt a belief contrary to their conscience, and it will be perfectly within their constitutional rights if they refuse to act against their conscience or creed, so long as they do not violate the law of the land.

(3) Education

They shall naturally have to accept the same system of education as the Government may enforce for the whole country. As regards religious education, however, they will not be compelled to study Islam, but will have the right to make arrangements for imparting knowledge of their own

religion to their children in their own schools and colleges or even in the National Universities and Colleges.

(4) Government Service

With the exception of a few key-posts, all other services will be open to them without any prejudice. The criteria of competence for Muslims and non-Muslims will be the same and the most competent persons will always be selected without any discrimination.

A list of key-posts can be easily drawn up by a body of experts. We can only suggest as a general principle that all posts connected with the formulation of State-Policies and the control of important departments should be treated as key-posts. In every ideological state, such posts are invariably given only to such persons who have fullest faith in its ideology and who are capable of running it according to the letter and the spirit of the ideology. With the exception of these key-posts, however, all other posts will be open to the *Zimmis*. For instance, nothing can debar them from being appointed as Accountant-General, Chief Engineer or Post-Master General of an Islamic State.

Likewise in the army, only the posts relating to actual warfare should be treated as key-posts, while other appointments, not directly connected with the conduct of war, can be thrown open to the *Zimmis*.

(5) Trade and Profession

In an Islamic State, the doors of industry, agriculture, trade and all other professions are open to all, and Muslims have no special privileges over non-Muslims in this regard, nor are the non-Muslims debarred from doing what Muslims

are permitted to do. Every citizen, be he a Muslim or a non-Muslim, enjoys equal rights in the field of economic enterprise.

VI

THE LAST WORD

It is necessary to emphasize before closing the discussion that an Islamic State is bound to give to the non-Muslim citizens whatever rights Islam prescribes or permits, regardless of what rights and privileges are given to or withheld from Muslims in the neighbouring or other non-Muslim states. Islam does not believe in the fact that Muslims should draw up their social or economic policies only with reference to the policies of non-Muslims, nor does it tolerate that if non-Muslims act unjustly, the Muslim states should make their innocent non-Muslim subjects the victims of wrath and vengeance, Islam has its own definite and clearly-defined ideology and Muslims have to observe its code to the best of their ability. Hence, whatever we give, we shall give with an open heart. Moreover, the rights conferred upon the non-Muslims by the Islamic State shall not be simply meant to adorn the Statute-Book but it shall be the duty of the state to translate them into actual practice.

It is hardly necessary to stress in the face of the above fact that the establishment of an ideological Islamic State is the greatest guarantee for non-Muslims in Pakistan. Then, and then alone, can that vicious circle of injustice be broken which is unfortunately going on in India with full vigour. And only in this way can Pakistan become the harbinger of truth and justice and show the right path to

India also. The pity, however, is that many non-Muslims of Pakistan who have been paying heed to distorted interpretations of Islam and have been experiencing its perverted practice, feel greatly perturbed when they hear of an Islamic State in this country. Not knowing the true facts, some of them start raising slogans that a Secular Republic like the one in India should be established in Pakistan. Is it not surprising that they insist on making an experiment which has already borne bitter fruits in India? Is that really something pleasant enough to be coveted? And, would it not be more reasonable to try and test a system of life based on godliness, honesty and observance of unalterable ethical principles than to follow one that has been tried and found wanting?